

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

| | | |
|---------------------------------------|---|----------------------|
| In the Matter of |) | |
| Petition of WorldCom, Inc. Pursuant |) | |
| to Section 252(e)(5) of the |) | |
| Communications Act for Expedited |) | |
| Preemption of the Jurisdiction of the |) | CC Docket No. 00-218 |
| Virginia State Corporation Commission |) | |
| Regarding Interconnection Disputes |) | |
| with Verizon-Virginia, Inc., and for |) | |
| Expedited Arbitration |) | |
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DIRECT TESTIMONY OF JOHN TROFIMUK AND MATT HARTHUN

(Issue I-10)

July 31, 2001

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A. My name is John A. Trofimuk. I am Regional Executive for the Central Region Telco and Line Cost Management group of WorldCom. My address is 205 North Michigan Avenue, 11th Floor, Chicago, Illinois 60601.

A. My name is Matthew J. Harthun. I am Commercial Counsel in the Network and Facilities Legal group of WorldCom. My business address is 8521 Leesburg Pike, 6th Floor, Vienna, Virginia 22182.

A. My duties as Regional Executive include the responsibility for ensuring the implementation of interconnection and other capabilities that WorldCom receives from local exchange carriers in order to support WorldCom's local and long distance telecommunications infrastructure. My group handles interconnection issues arising in various incumbent LEC and independent telephone company service areas. In addition my group includes carrier management for incumbent LECs and independent telephone companies operating in various territories, project management for OSS implementation for local service interfaces with these telephone companies, and bill audit and payment of nearly \$2.5 billion, annually, for interconnection, access and other services purchased from these telephone companies.

A. My duties as Commercial Counsel include supporting WorldCom's negotiation, drafting, and enforcement of interconnection agreements with Verizon under Sections 251 and 252 of the Communications Act of 1934, as amended.

1 **Q. Please describe your relevant experience and background.**

2 A. I joined WorldCom (then MCI) in 1997 as Director of Finance for the Central Region
3 Telco and Line Cost Management group. In October of 1998 I assumed my responsibilities as
4 Regional Executive. Prior to joining WorldCom, I spent fourteen years in various financial
5 management positions with AT&T and five years as an outside auditor with Arthur Andersen &
6 Co. I received a Masters degree in Management from Northwestern University in 1992, and a
7 Bachelor of Science degree in Accounting from Millikin University, Decatur, Illinois in 1978.

8 A. I joined WorldCom (then MCI) in late 1996. I have been involved with Verizon (both
9 legacy GTE and Bell Atlantic) interconnection agreements since that time. Prior to joining
10 WorldCom, I was a staff attorney with the Policy and Program Planning Division of the FCC's
11 Common Carrier Bureau, where I worked in the areas of transport rate restructure, exchange
12 access rate structures and price caps, local number portability, and the unbundling of basic
13 telecommunications services. Prior to joining the FCC, I worked in private practice as a
14 communications attorney. My primary responsibilities involved the negotiation of complex
15 commercial agreements in the area of satellite digital transmission equipment, launch services,
16 and transponder leases. I received a J.D. degree from the University of Michigan Law School in
17 1990. In 1985, I received a Bachelor of Science degree in Engineering from Trinity College in
18 Hartford, Connecticut.

19 **Q. What is the purpose of your testimony?**

20 A. The purpose of our testimony is to address WorldCom's position and rationale regarding
21 Issue I-10, which states,

1 **Issue I-10**

2 *Should the Interconnection Agreement contain a provision defining the term of the*
3 *Interconnection Agreement (3 years from the Effective Date), and establishing a process for*
4 *extending the term and effectiveness of the Interconnection Agreement pending creation of a*
5 *superceding interconnection agreement? (Part A, Section 32.1)*

6 **Term of the Agreement**

7 **Q. What is WorldCom's position and the underlying rationale with respect to the term**
8 **of the interconnection agreement?**

9 A. WorldCom proposes including in the Verizon/WorldCom Interconnection Agreement,
10 Part A, Section 32.1, which provides that:

11 **Section 32. Term of Agreement**

12 32.1 This Agreement shall become effective as of the Effective Date and, except as
13 otherwise provided in this Agreement, shall remain in effect until three (3) years after the
14 Effective Date ("Initial Term"). Thereafter, this Agreement shall remain in full force and
15 effect under the same terms and conditions, subject to true-up of the rates, until the
16 effective date of a superceding interconnection agreement between Verizon and MCI; provided that either (i) MCI has requested formal or informal negotiations, or
17 (ii) Verizon has requested informal negotiations, of a superceding interconnection
18 agreement. Neither Party may request such negotiations earlier than 120 days prior to the
19 end of the Initial Term.

21 The Interconnection Agreement should contain this provision because it defines a
22 reasonable period of time during which the rights and obligations set forth in the Interconnection
23 Agreement are effective between the Parties. This provision makes clear when the obligations of

1 both parties under the Interconnection Agreement begin and end. In so doing, this provision
2 avoids ambiguity as to the rights and obligations that prevail at any particular point in time.

3 The three year length of contract proposed herein is a reasonable term which provides the
4 degree of stability needed for business planning purposes. A shorter term does not offer this
5 stability and would inhibit reasonable business and investment decisions. It is difficult to make
6 plans to enter a market if it is possible that the services, unbundled network elements, or
7 interconnection, for example, upon which that plan is based can be withdrawn after a short
8 period of availability. It is also difficult to make these same plans if the terms and conditions
9 under which the services, unbundled network elements, or interconnection can change
10 significantly within a short period of time after having been established.

11 The three-year term proposed here by WorldCom was agreed to by WorldCom and
12 Verizon for the existing Verizon-VA/MCI metro interconnection agreement and for all of the
13 existing Agreements between WorldCom and the former Bell Atlantic-South and Bell Atlantic-
14 North entities. It still represents a reasonable term as it did in 1996 and 1997. In fact, a three
15 year term is typical today in this industry for this type of agreement.

16 **Establishment of a Successor Agreement**

17 Section 32.1 as proposed by WorldCom is equitable in that it permits either party to
18 continue the effectiveness of the Interconnection Agreement, pending establishment of a
19 successor agreement, by requesting negotiations. It permits the interconnection agreement to
20 continue in effect only if one of the parties has started the process of negotiating a replacement
21 agreement. In WorldCom's experience, it is common for an interconnection agreement's initial
22 term to end before a new agreement is in place. That is because, although the Act contemplates
23 that the entire negotiation and arbitration process will be completed in nine months, in practice it

1 invariably takes much longer to complete. For example, in one case almost four years passed
2 between the date negotiations were requested and the date a final interconnection agreement was
3 signed.

4 Given the unpredictability of this process, it is important that the Agreement continue in
5 effect after the initial term has expired, and while negotiations for a new Agreement are
6 occurring, so that WorldCom can continue to provide service to its customers. A cessation of
7 performance under the Agreement by Verizon would seriously disrupt WorldCom's business and
8 the services provided to WorldCom's customers. If Verizon stopped providing elements when
9 the contract expired, for example, WorldCom would suddenly be unable to serve the customers
10 to whom it provides service through the use of such elements. Similarly, if Verizon stopped
11 interconnecting with WorldCom when the agreement's initial term expires, WorldCom's
12 customers would be unable to call any customers served by Verizon. Moreover, even if Verizon
13 agrees to forego shutting off service, any technical termination of the Interconnection Agreement
14 plunges into uncertainty the terms and conditions under which WorldCom purchases services
15 from Verizon. In turn, this casts significant uncertainty over the business plan under which
16 WorldCom is operating in the provision of services to its customers. WorldCom would not
17 know, for example, whether Verizon intended to apply the terms and conditions contained in the
18 agreement, or if it intended to apply the terms and conditions contained, for example, in a tariff
19 or similar document. That kind of uncertainty is unacceptable in a commercial marketplace.

20 Verizon has apparently misread WorldCom's proposed language. In its Response
21 Verizon states that "To wit, WorldCom would have the contract provide that it will go on
22 indefinitely (*i.e.*, it would be evergreen) unless WorldCom formally or informally requests
23 negotiations, or unless Verizon informally requests negotiations. A cursory reading of

WorldCom's proposed language suggests that it is [sic] fair resolution of the matter." See Verizon's Response at page 250 (emphasis added). It is clear that Verizon has misconstrued and reversed the effect of WorldCom's proposal. Under WorldCom's proposed Section 32.1, the Interconnection Agreement would only continue in effect if WorldCom or Verizon requested negotiations of the successor agreement. WorldCom is not proposing or suggesting that the Interconnection Agreement continue into "evergreen" automatically, but only once one of the parties (through either the 251/252 process or informally for WorldCom, or informally for Verizon (which is not entitled to seek negotiation pursuant to the Act, but which can seek negotiation informally)) has commenced the process to replace and supercede the Interconnection Agreement.

To the extent that Verizon is concerned about perpetual evergreen of the Interconnection Agreement, the proposed provision should alleviate that concern. The proposed language permits Verizon to initiate informal negotiation of a new agreement.¹ Any negotiations of a successor agreement (whether formal or informal) would be subject to good faith requirements, for which Verizon or WorldCom would have recourse with the Virginia Commission or the FCC. Thus, if Verizon felt that negotiations for a new agreement were not progressing satisfactorily, it could invoke the Commission's jurisdiction to move things along.

So long as negotiations for a successor agreement have been requested or are on-going, the Interconnection Agreement should remain in effect. Under no circumstances should Verizon be permitted to compel WorldCom to take service under an SGAT or tariff when it has requested negotiation of a new interconnection agreement. Termination of WorldCom's rights under the

¹ The proposed language permits Verizon to initiate informal negotiations, not formal, because only a CLEC can institute formal negotiations pursuant to Section 252(a), by sending a request for interconnection, network elements, or services.

1 Interconnection Agreement would have a severe effect upon WorldCom's ability to provide
2 service to its customers and accordingly, the drastic step of contract termination should not occur
3 without Commission approval.

4 In any event, Verizon's alleged concern that WorldCom would attempt to maintain the
5 successor agreement in perpetual evergreen is unfounded. It is belied by the circumstances of
6 this case. It was WorldCom which requested negotiation of a new agreement. When negotiations
7 with Verizon stalled in Virginia, it was WorldCom which invoked the Virginia Commission's
8 jurisdiction (by requesting mediation) in an attempt to move the negotiations along. Verizon, on
9 the other hand, opposed Commission involvement. Finally, it is WorldCom which has twice
10 requested arbitration (at the SCC and the FCC) of a new agreement. WorldCom is plainly not
11 interested in a perpetual evergreen.²

12 **Q. Have you reviewed Verizon's proposal?**

13 A. Yes. Verizon's proposal to use AT&T/Verizon language is problematic for several
14 reasons. First, the AT&T/Verizon language contains a bilateral termination provision. This
15 means that either party can terminate for convenience the contract on 90 days notice once the
16 initial term has expired. In WorldCom's view this is unacceptable. This permits Verizon to
17 escape its statutory and regulatory obligations embodied in the agreement. Although those
18 underlying statutory and regulatory obligations remain unchanged when an interconnection
19 agreement expires, historically Verizon has refused to allow a competitive provider to purchase
20 services simply because an FCC or state commission order requires Verizon to make the service
21 available. Verizon requires some type of legal purchase vehicle, such as a contract, SGAT or
22 tariff. Permitting Verizon the ability to terminate the interconnection agreement would permit

1 Verizon to force a competitive provider to purchase services under Verizon's tariffs or SGATs,
2 if these are in place. But, the Act provides that CLECs are entitled to purchase services out of an
3 Interconnection Agreement if that is their choice. CLECs should not be forced into an SGAT or
4 tariff when they are engaged in negotiations for a successor Interconnection Agreement.

5 If a SGAT or tariff will not, the situation would be worse yet. In those circumstances, the
6 terms and conditions under which services would be purchased would not be established and
7 Verizon would be permitted to escape its statutory and regulatory obligations to WorldCom. The
8 critical point is that in either situation, competitive providers and their business plans, investment
9 decisions, and customers face an unacceptable level of uncertainty.

10 Second, notwithstanding Verizon's disingenuous description to the contrary, the
11 AT&T/Verizon contract language does not permit the parties "to operate under the terms of the
12 expiring agreement," "so long as either Party chooses to request renegotiation of the agreement
13 under the Act." See Verizon Response at page 250. Under the AT&T/Verizon language, this
14 only remains true for one year after the date of termination. Unfortunately, as explained above,
15 at the end of that one-year period a successor agreement is not likely to be in place. Thus, a date-
16 certain on which the existing interconnection agreement expires, without having a successor
17 agreement in place, is unworkable because it is impossible to predict how long negotiations will
18 take. It also adds to Verizon's incentive to stall and delay the negotiations and arbitration of
19 successor agreements. The negotiation and arbitration process surrounding the three
20 interconnection agreements in this consolidated arbitration indicate that a one or two year "drop
21 dead date" would have created a period during which no interconnection agreement would have
22 been effective. Verizon has been quite successful in stalling the establishment of interconnection

² If it helps put aside Verizon's unfounded concern, WorldCom is willing to accept a provision under which the Agreement could be terminated by a regulatory body upon a showing by either party that the other was either

1 agreements through the Section 252 process — in one case stretching out for almost four years
2 the process beginning with a letter requesting negotiations through commission approval of an
3 agreement.

4 Third, Congress has not granted incumbent LECs the ability to seek negotiation under
5 sections 251 and 252 of the Act. To the contrary, Congress made it clear that only “requesting
6 carriers” — not incumbent LECs — have the right to request interconnection under Section
7 252(a)(1). AT&T is free to negotiate that right away in return for something else. The
8 AT&T/Verizon language suggests this to be the case. Neither Cox nor WorldCom, however,
9 should be compelled to grant Verizon that right.

10 The Commission should approve the contract language proposed by WorldCom and the
11 general principles set forth below.

12 *GENERAL PRINCIPLES:*

- 13 • *Verizon cannot compel a CLEC to take service under tariff terms or an SGAT at expiration of*
14 *an Interconnection Agreement.*
- 15 • *So long as negotiations for a successor Agreement have been requested or are ongoing, the*
16 *current Agreement should continue in effect.*
- 17 • *Verizon may not terminate an interconnection agreement without Commission oversight.*

18 **CONCLUSION**

19 **Q. Does this conclude your testimony?**

20 **A.** Yes, it does.

negotiating in bad faith or failing to negotiate for a successor agreement.

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AFFIDAVIT OF JOHN TROFIMUK AND MATT HARTHUN

The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, Matthew J. Harthun, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Matthew J. Harthun

Subscribed and Sworn to before me this
30th day of July, 2001.



Notary Public

**My Commission Expires
May 14, 2005**

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The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, John A. Trofimuk, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


John A. Trofimuk

Subscribed and Sworn to before me this
30th day of July, 2001.


Notary Public

Embossed Notion is My
Commission of Virginia Notary Public Seal
My Commission Expires December 31, 2004
SALLY A. WOOD